

HUMAN SERVICES
DIVISION OF YOUTH AND FAMILY SERVICES
Dispute Resolution

Proposed Readoption with Amendments: N.J.A.C. 10:120A

Proposed Repeal and New Rules: N.J.A.C. 10:120A-2

Authorized By: Gwendolyn L. Harris, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-9 et seq., 30:1-12, 30:4C-4, 26a and 49 and 52:14B-4(b), and N.J.A.C. 10:6-1.

Calendar Reference: See Summary below for an explanation of the exception to the calendar requirements.

Proposal Number: PRN

Submit written comments by 2002 to:

Pamela Wentworth

Office of Policy, Planning and Support

Division of Youth and Family Services

P. O. Box 717

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:120A is scheduled to expire February 2, 2003. Pursuant to N.J.S.A. 52:14B-5.1c, this date is extended to August 1, 2003. The Division of Youth and Family Services has reviewed these rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required by Executive Order No. 66(1978).

These rules were originally developed by the Division with the advice of the Operations Policy to Rules (OPTR) Group. The Division instituted this group representing interest groups to advise the Division on the development of rules.

The chapter has been effective in governing the Division's dispute resolution process. These rules require that the Division notify in writing a parent of a decision that creates a Division service issue and a service provider of a decision which creates a status issue. The notice must include the person's right to dispute resolution. There are three types of dispute resolution available in most situations. None of the types of dispute resolution require that the appellant have an attorney or pay any type of fee.

The Division believes that the dispute resolution process as outlined in this chapter gives broad access to applicants, clients, and service providers to dispute a decision by the Division that they disagree with.

The existence of the dispute resolution process acts as an incentive to the Division to maintain a high level of communication with applicants, clients, and service providers.

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The Division has determined, however, that the changes necessary to Subchapter 2 are so extensive, that the existing subchapter should be repealed and a new subchapter proposed. The essential content of the subchapter remains the same, but the sections are reorganized and modified to make the subchapter more logical and easier for the public to understand. The specific reorganization and modifications are discussed later in this summary.

In 1998, the Superior Court of New Jersey, Appellate Division, decided two cases regarding the entitlement of perpetrators of substantiated child abuse or neglect to appeal, through an evidentiary administrative hearing, a substantiated finding. These cases are: In the Matter of Allegations of Sexual Abuse at East Park High School, 314 N.J. Super. 149, and New Jersey Division of Youth and Family Services v. M.R., 314 N.J. Super. 390 (App. Div. 1998). In each case, the Court found that, where material disputed facts existed, a trial-type hearing before an Administrative Law Judge was needed to protect the due process and liberty interests of the perpetrator of substantiated child abuse or neglect.

Existing N.J.A.C. 10:120A-4.2(c)3 specifically prohibits the Division from transmitting requests to change a finding of child abuse or neglect to the Office of Administrative Law (OAL) for an administrative hearing, although N.J.A.C. 10:120A-3.1(a)8 requires the Division to hold a dispositional review when properly requested by the appellant. The Court's decisions require that a trial-type hearing at the OAL be available where material disputed facts relating to a substantiated child abuse and neglect finding exist. The decisions also state that a less formal process may be afforded as long as the substantiated perpetrator is informed that he or she may choose either the administrative hearing conducted by the OAL or the less formal process.

Therefore, the Division proposes an amendment at recodified N.J.A.C. 10:120A-4.3(a)2 to conform to the Division's current policy of transmitting contested cases of substantiated findings of child abuse and neglect to the OAL for administrative hearings. The preliminary efforts described in

proposed new N.J.A.C. 10:120A-2.4 and the dispositional reviews described in N.J.A.C. 10:120A-3.1 remain available as informal review options for a perpetrator of substantiated child abuse or neglect, if he or she so chooses.

Throughout proposed N.J.A.C. 10:120A-2.4, existing 3.1(a), and recodified 4.4, the Division is changing the word "informal" to the word "preliminary." The purpose of this change is to remove a discrepancy in the terms between the M.R. case and these rules. In the M.R. case opinion, the court uses the term "informal conference" to refer to the Division's dispositional review. The term used here, informal efforts, is even less formal than a dispositional review. Therefore, the Division substitutes "preliminary efforts" for "informal efforts," to eliminate any confusion. The Division is adding the word "preliminary" to N.J.A.C. 10:120A-1.2(a), to clarify that this chapter covers all types of dispute resolution, preliminary, informal, and formal.

Additionally, in order to bring the rules into conformity with this proposed amendment of recodified N.J.A.C. 10:120A-4.3(a)2, the Division proposes another amendment. The amendment is to N.J.A.C. 10:120A-1.2(a)2, where the Division is clarifying that the scope of the rules includes only the finding of "substantiated" resulting from a child protective service investigation. In In the Matter of an Allegation of Physical Abuse Concerning L.R. at First Middle School on 3/26/96 (A.V.), 321 N.J. Super. 444 (App. Div. 1999), the Appellate Division concluded that an investigative finding of "not substantiated" or "unfounded" does not entitle an appellant to an OAL administrative hearing.

The Division has standardized terminology throughout the chapter, using "child abuse or neglect" instead of "child abuse" or "abuse or neglect." The terminology occurs at existing N.J.A.C. 10:120A-1.2(a)2, proposed 2.6(a)1, existing 3.1(a)4, recodified 4.3(c)3, and 4.3(c)4. While some statutory language uses "abused child" to include instances of both child abuse and neglect, it is clearer to the public to use the more descriptive term.

The Division is changing "administrative review" to "administrative hearing" to standardize the terminology within the rest of the chapter at proposed N.J.A.C. 10:120A-2.9(a).

The Division has further amended N.J.A.C. 10:120-1.2(a)2 to clarify that these rules include challenges to substantiated findings made by the DYFS

Conflict Unit of the Office of the Public Defender, as well as by a Division representative. Investigators from the Office of the Public Defender complete child abuse and neglect investigations on behalf of the Division when the allegations of child abuse or neglect involve: a current Division employee when the incident occurs during the course of his or her duties, an immediate household member of a current Division employee, or a Division employee when the incident involves the employee's own child.

N.J.A.C. 10:12A-1.3(b) is a new subsection of the "Definitions" section. Adding this subsection allows the definitions of "Division" and "Division representative" to include the Office of the Public Defender and its employees in the relevant subchapters, without adding the Office of the Public Defender each time the Division or a Division representative is mentioned.

This change necessitates recodifying the section so that the original material is found in N.J.A.C. 10:120A-1.3(a).

The Division is amending N.J.A.C. 10:120A-1.2(e). The reference to N.J.A.C. 10:3-4 is removed because N.J.A.C. 10:3-4 was repealed in 1998. N.J.A.C. 10:6 is referenced as that chapter governs dispute resolution related to Department of Human Services' actions. The Division has also revised the wording to maintain the point that this chapter does not govern questions of fact related to contractual activities.

The Division has decided to change a term used throughout the Chapter, from "dispositional conference" to "dispositional review." As this procedure is not always a face-to-face conference, the term "review" more accurately encompasses all phases of the process.

Basically, these rules set out procedures for the dispute resolution of four kinds of dispute situations: Division actions, findings of substantiated child abuse or neglect, agency decisions, and contested and uncontested cases. Division actions and agency decisions are each defined in N.J.A.C. 10:120A-1.3(a), Definitions. In the Division's review of these rules, Division staff examined this terminology carefully and found that the use of Division action and agency decision had been imprecise in some sections. The Division carefully reviewed each use of each term throughout the chapter and made amendments throughout to make the use of each term

accurate. In some places, "Division action" was used when the point actually applied to both Division actions and agency decisions. In those cases the missing term, "agency decision," has been added. See N.J.A.C. 10:120A-1.1(a)3, proposed 2.5(e), proposed 2.5(g), proposed 2.6(b), and recodified 4.3(c)1.

In recodified N.J.A.C. 10:120A-3.2(k) and (n), the Division adds the word "agency" to make the term "agency decision." Since there are three types of decisions mentioned in these rules, it is important to state each one accurately.

A number of cites used the word "action" when the appropriate term is the defined "Division action." All relevant cites throughout proposed Subchapter 2 have been corrected; N.J.A.C. 10:120A-3.2(j) is similarly amended. The following definitions in N.J.A.C. 10:120A-1.3(a) are also amended by adding "Division" to "action": dispositional review, reduction, and Review Officer.

The Division is also amending the definition of "Division action" to state that a Division action is a decision, plan or conduct which may result in a contested case as specified in recodified N.J.A.C. 10:120A-4.3(a). The modifier is necessary because when the Division representative makes the decision, plan, or conduct, the Division representative does not know whether that will lead to a contested case. The citation is being modified to include subsection (a), as subsection (a) is the only subsection in 4.3 that discusses contested cases.

The Division is removing redundant words from two definitions in N.J.A.C. 10:120A-1.3(a), "reduction" and "Review Officer." "Decision" is redundant as the definitions contain the term "Division action." A "Division action" can be a decision according to the definition.

The Division proposes adding the definition of "substantiated" to N.J.A.C. 10:120A-1.3(a). The definition is taken from N.J.A.C. 10:129A-3.3(a)1. It is added here for the convenience of the reader.

The Division is also proposing to amend the definition of "dispositional review" at N.J.A.C. 10:120A-1.3(a). Telephone conferences with appellants and others, as well as record and document reviews, are included in this

definition in order to accommodate the wishes of the appellant. The definition of "record and document review" at N.J.A.C. 10:120A-1.3(a) is also amended to clarify that a record and document review is one type of dispositional review that is conducted by a Review Officer.

The amendment at recodified N.J.A.C. 10:120A-3.2(c) is to indicate that a record and document review is a type of dispositional review.

Since a record and document review is a type of dispositional review, it is redundant to repeat it in N.J.A.C. 10:120A-1.3(a), in point 3 of the definition of "final agency decision." Therefore, the Division is removing it from that definition.

The Division has reformatted the definition of "final agency decision" to list separately each type of decision that becomes a final agency decision. This is to make the definition easier to read.

Point 3 of the definition of "final agency decision" is amended to add that a final agency decision must be the Director's or his or her designee's final decision.

Point 4 of the definition of "final agency decision," at N.J.A.C. 10:120A-1.3(a), is added to reflect that an agency decision becomes a final agency decision when the appellant does not exercise his or her right to further dispute resolution, as indicated in proposed 2.7(c).

Point 5 of the definition of "final agency decision," at N.J.A.C. 10:120A-1.3(a), is added to include that a final decision by the Director granting summary disposition is also a final agency decision, as reflected in the proposed new section at N.J.A.C. 10:120A-4.2.

The Division is removing the title "Regional Administrator" from N.J.A.C. 10:120A-1.3(a), the definition of "final agency decision," and proposed 2.7(b) because that title is no longer used in the Division.

At N.J.A.C. 10:120A-1.3(a), the Division is amending the term "Division service issue" to put three listed services in alphabetical order. In addition, the Division is including two new services to the list of services. Adding the new services here allows the parent, the child, or a relative to receive dispute resolution when properly requested.

The Division is adding the definition of "finding" to N.J.A.C. 10:120A-1.3(a), as found in N.J.A.C. 10:129A-1.4, for the convenience of the reader.

The Division is adding the definition of "initial decision" to N.J.A.C. 10:120A-1.3(a) as a help to the reader. Since the rules refer to three specific types of decisions, having definitions of all three clarifies the rules. This definition is taken from N.J.A.C. 1:1-2.1.

At N.J.A.C. 10:120A-1.3(a), the Division is amending the definition of "Office of Administrative Law," substituting "over" for "during." This is a technical wording change clarifying that an administrative law judge presides over an administrative hearing.

The Division is amending the definition of "service provider" in N.J.A.C. 10:120A-1.3(a). First, the term is being changed from the plural to the singular, which is the norm for regulatory definitions. Next, the Division is adding additional groups of persons to the groups included as service providers. The first new group is that of relatives of a child in the care of the Division. N.J.S.A. 30:4C-12.1 requires the Division to assess "each interested relative's ability to provide the care and support...required by the child." The statute further allows a relative the right to seek review by the Division of the Division's determination that the relative is either unwilling or unable to assume care of the child, but does not authorize these disputes to be sent to the Office of Administrative Law for an administrative hearing.

The Division is also adding another group of persons to the definition of service provider, that of relative or family friend caregivers or applicants in the DYFS Legal Guardianship Subsidy Program or the DYFS Relative Care Permanency Support Program. They are included as service providers so that they are included wherever service providers are mentioned in the chapter, without having to list them separately.

The third amendment to the definition of service provider is to include applicants to become adoptive or foster parents. This is implied in the definition of "status issue," which includes the denial of an adoptive or foster home. The Division denies applicants to be adoptive or foster parents and closes adoptive or foster homes which have been approved.

The definition of "status issue" in N.J.A.C. 10:120A-1.3(a) is being amended

to include the Division's determination based on N.J.S.A. 30:4C-12.1 that a child's relative is either unwilling or unable to assume care of the child. Decisions regarding relative and family friend caregivers and applicants for the DYFS Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program have also been added. The Division is also reorganizing the definition to state what a status issue is for each of the four types of service providers separately, in order to clarify the relevant citations.

At proposed N.J.A.C. 10:120A-2.1 and existing 3.1(a)3, the Division has removed foster and adoptive parents and applicants and substituted the term "service provider." The Division chose to add the relatives whom the Division assesses pursuant to N.J.S.A. 30:4C-12.1 and caregivers under the DYFS Legal Guardianship Subsidy Program and the DYFS Relative Care Permanency Support Program to the definition of "service provider" instead of adding these groups to lists of people throughout the document. The effect of this amendment is to include these relatives and caregivers in the list of people who are eligible for a dispositional review of a status issue.

The relatives assessed pursuant to N.J.S.A. 30:4C-12.1 are also included in the Scope, N.J.A.C. 10:120A-1.2(a)3 as service providers. The Scope cites rules for other types of service providers. As there are no rules for relatives, the Division is citing the relevant statute related to the review of disputes. Additionally, the Division is removing the term "regulated by" from N.J.A.C. 10:120A-1.2(a)3 and 1.1(a)1, since the disputes of service providers are governed by both statute and rule.

The Division is adding a regulatory reference to N.J.A.C. 10:120A-1.2(a), as the Division has added relative and family friend caregivers and applicants for the DYFS Legal Guardianship Subsidy Program to the definition of service provider. These service providers will be regulated by proposed N.J.A.C. 10:132A, published at 34 N.J.R. . With these additions, N.J.A.C. 10:120A-1.2(a) has been reformatted to list each of the four situations covered by the chapter separately.

The Division is amending recodified N.J.A.C. 10:120A-1.2(c), Scope, to add two additional references, N.J.A.C. 10:121A-2.3 and 2.4 and 10:126-5.8, to the list of licensed, certified or approved agencies or programs that have separate dispute resolution processes and are not covered by these rules.

Those two chapters were and continue to be included in N.J.A.C. 10:120A-2.2(e), but had been inadvertently excluded from 1.2(c).

As mentioned earlier in this summary, Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings, is being repealed in its entirety and a new Subchapter 2, General Provisions for Division Dispute Resolution and Administrative Hearings is being proposed as new rules. Existing Subchapter 2 did not follow a logical sequence of events and required extensive reorganizing in order for it to clearly describe the dispute resolution process. The substance of existing N.J.A.C. 10:120A-2.1 is moved to proposed 2.4; the substance of existing N.J.A.C. 10:120A-2.2 is moved to proposed 2.5; the substance of existing N.J.A.C. 10:120A-2.3 is moved to proposed 2.1; and the substance of existing N.J.A.C. 10:120A-2.4 is moved to proposed 2.2. The Division is adding proposed N.J.A.C. 10:120A-2.3 to this subchapter. The substance of existing N.J.A.C. 10:120A-2.5 through 2.8 is moved to proposed N.J.A.C. 10:120A-2.6 through 2.9. Additional changes are being made throughout the proposed new Subchapter 2; some of these have been discussed above, and the remainder are discussed below.

Proposed N.J.A.C. 10:120A-2.1 states that the Division must provide proper notice to a service provider of a Division action that creates a status issue subject to a dispositional review.

Existing N.J.A.C. 10:120A-2.2(c) allowed the client or applicant to make a request for a dispositional review or administrative hearing to any Division representative. Existing 2.3(b) and 2.4(d)3 required only that the Division representative's name be provided. Proposed 2.1(b)3 and 2.5(c) now state that the Division's notice to an applicant or client must contain the name, address, and telephone number of the person to whom a request for a dispositional review or administrative hearing is to be made. The Division is proposing this change to make requesting an appeal easier for the client, by giving the client a specific contact person with an address and telephone number.

At proposed N.J.A.C. 10:120A-2.1(a), the Division is removing the phrase, "except as limited by (c) below, the" and placing it at the beginning of proposed N.J.A.C. 10:120A-2.1(b). Proposed N.J.A.C. 10:120A-2.1(c), says that advanced notice is not required on the disposition of an application.

Proposed N.J.A.C. 10:120A-2.1(a) does not mention "advance notice," while proposed N.J.A.C. 10:120A-2.1(b) does require advance notice. Therefore, the mention of the exception to the advance notice requirement belongs in subsection (b).

Proposed N.J.A.C. 10:120A-2.2 states that the Division must provide proper notice to a parent of a Division action that creates a Division service issue subject to a dispositional review.

At proposed N.J.A.C. 10:120A-2.2(a), the Division is adding the word "Division" to make the term "Division service issue." That is a defined term at N.J.A.C. 10:120A-1.3(a). This amendment makes for consistency of terminology within the chapter.

The Division is removing the phrase "... or implementation of a decision..." from proposed N.J.A.C. 10:120A-2.2(d) because its meaning is contained within a Division action as defined.

Proposed N.J.A.C. 10:120A-2.3 states that the Division must provide notice of a finding of substantiated child abuse or neglect.

Proposed N.J.A.C. 10:120A-2.4 states that preliminary efforts may be used to resolve disputes.

At proposed new N.J.A.C. 10:120A-2.4(c), 2.5(a) and 2.5(b), the Division is removing the word "calendar" from the term "calendar day," that had been used in existing Subchapter 2. This removes the term "calendar day" from the chapter. It leaves two terms in use, "business days," which is defined in N.J.A.C. 10:120A-1.3(a), and "day." Removing "calendar day" makes no change the time frames in the three referenced citations, as a "day" and a "calendar day" are the same.

The Division has added (e) to proposed N.J.A.C. 10:120A-2.4 to clarify that preliminary efforts are allowed following a request for a dispositional review.

Proposed N.J.A.C. 10:120A-2.5 states who may request a dispositional review or an administrative hearing.

Consistent with the amendments intended to accurately reference "Division action" and "agency decision," mention of an agency decision was removed

from proposed N.J.A.C. 10:120A-2.5(a), leaving it to be about disputes arising from a Division action only. A new subsection is being added at proposed N.J.A.C. 10:120A-2.5(d) regarding disputes which arise from an agency decision. This split is necessary to clarify that the only type of appeal for an agency decision is an administrative hearing. An appellant may appeal a Division action through either a dispositional review or an administrative hearing, if eligible.

Proposed N.J.A.C. 10:120A-2.6 states the circumstances under which the Division must maintain the status quo until the agency decision or initial decision is rendered.

At proposed N.J.A.C. 10:120A-2.6(a), the Division is changing the language used in existing N.J.A.C. 10:120A-2.5(a) in order to use the standard, defined terms. The decisions referred to in the subsection are properly the agency decision and the initial decision. These are the names of the decisions which result from a dispositional review and an administrative hearing.

At proposed N.J.A.C. 10:120A-2.6(a), the Division has switched numbers one and two. This is to emphasize the importance of not placing a child at risk of child abuse or neglect when determining the appropriateness of continuing the service or status.

The Division is changing the same wording in two places, at proposed N.J.A.C. 10:120A-2.6(a) and (b). "Pending the resolution of a request..." is being amended to read "Upon receipt of a request..." The reason for the change in wording is to clarify that what the sentence states begins immediately, at the time a request is received.

Proposed N.J.A.C. 10:120A-2.7 states when the Division must issue the final agency decision, its effective date, and how the decision is to be delivered to the appellant.

The Division is changing proposed N.J.A.C. 10:120A-2.7(b) by removing the modifier "dispositional conference" and adding "agency" to modify "decision." This change enables the subsection to use the defined term.

The Division is also removing "referred, accepted or" from proposed N.J.A.C. 10:120A-2.7(b). This is necessary because the time frames for a

decision becoming a final agency decision differ. When ineligible for an administrative hearing, the agency decision becomes the final agency decision within 45 days of receipt of requesting a dispositional review. The Division is also adding the Motion for Summary Disposition as another way to generate a final agency decision, as reflected in the proposed new section at N.J.A.C. 10:120A-4.2.

The Division has added a new subsection (c) to proposed N.J.A.C. 10:120A-2.7 to cover situations in which an appellant is entitled to an administrative hearing but chooses not to request one. In that situation, the agency decision becomes the final agency decision within 20 days of notification of the agency decision.

The addition of a new subsection (c) to proposed N.J.A.C. 10:120A-2.7 means that existing (c) through (g) are now relettered (d) through (h).

In proposed N.J.A.C. 10:120A-2.7(d), the Division is changing "administrative hearing" to "initial decision" because it is the receipt of the initial decision that results from the administrative hearing that triggers the Director's review and issuance of a final agency decision.

Proposed N.J.A.C. 10:120A-2.7(g) now uses the term "final agency decision" throughout the subsection. The purpose of this change is to attain clarity resulting from the consistent use of a defined term.

Proposed N.J.A.C. 10:120A-2.8 states that appeals of the final agency decision may be made to the Appellate Division of the Superior Court.

Proposed N.J.A.C. 10:120A-2.9 provides the parameters by which the appellant may access the Division's records.

Proposed N.J.A.C. 10:120A-2.9(a)1 allows an appellant to examine records used to reach a conclusion before an administrative hearing or dispositional review. The existing rule only allows examination of records during an administrative hearing, and not during a dispositional review. The Division proposes that this paragraph include the examination of records during a dispositional review.

The Division proposes to add the citation of the Division's child abuse confidentiality statute to proposed N.J.A.C. 10:120A-2.9(a)3 to complement

other legal citations addressing the confidentiality of child abuse and neglect information.

In existing N.J.A.C. 10:120A-3.1(a), the Division is proposing to remove paragraph 9 because paragraphs 1 through 8 encompass all appellants entitled to an OAL hearing and because the reference in paragraph 9 is to a subsection that discusses uncontested cases; appellants are not entitled to a hearing by the OAL in uncontested cases.

The Division is proposing adding a new subsection (b) to N.J.A.C. 10:120A-3.2 to state that an appellant must submit information to the Review Officer by an agreed-upon due date when the appellant has agreed to submit the information to the Review Officer.

The Division also proposes to add a new subsection (c) to N.J.A.C. 10:120A-3.2 to add the option of a telephone conference as a type of dispositional review. This is a choice for the convenience of an appellant who does not wish to meet in person with the Review Officer.

The addition of subsections (b) and (c) to N.J.A.C. 10:120A-3.2 recodifies the rest of the subsections from (d) to (n).

The Division proposes the addition of "in person" to recodified N.J.A.C. 10:120A-3.2(c)1. The purpose of this addition is to emphasize that the appellant is giving up the opportunity to meet in person with the Review Officer when a record and document review or a telephone conference is selected.

The Division proposes to amend recodified N.J.A.C. 10:120A-3.2(d) in order to combine the circumstances under which the Division conducts a record and document review into only one circumstance and to clarify that the only circumstance necessary for a record and document review is for the appellant to decline to meet with the Review Officer and to decline the telephone conference. The Division proposes this change in order to better meet the needs of appellants. Recodified N.J.A.C. 10:120A-3.2(d)2 is completely repealed.

The Division has added the option of a telephone conference to the option of having a record and document review at recodified N.J.A.C. 10:120A-3.2(d) and (g). This is a choice for the convenience of an appellant who does not

wish to meet in person with the Review Officer.

Recodified N.J.A.C. 10:120A-3.2(h) has been revised to include in a new paragraph 2 that the Division considers a request for a dispositional review to be withdrawn if the appellant does not provide the agreed-upon information within the agreed-upon time. The purpose of this addition is to make sure that dispositional reviews do not linger indefinitely, while giving the appellant reasonable time to obtain and submit written information.

At recodified N.J.A.C. 10:120A-3.2(l), the Division proposes two amendments. The Division wants to allow itself 60 calendar days, instead of 45, to send the written notice of the agency decision to the appellant. Given the large number of requests for dispositional reviews, the Division's staff needs the additional time to complete the dispositional review process. The word "conclusion" is being replaced with "completion," as that is the term commonly used within the Division.

The Division is adding a more detailed citation at recodified N.J.A.C. 10:120A-3.2(m). Added to the citation of proposed N.J.A.C. 10:120A-2.5 are the relevant subsections (a), (b), and (d). This is a convenience to the reader, who does not have to read subsections through (g) to see if they also apply to the recodified N.J.A.C. 10:120A-3.2(m).

At recodified N.J.A.C. 10:120A-3.2(n), the time allowed for the appellant to request a further review after receiving the agency decision resulting from a dispositional review, is being increased from 10 to 20 business days. Experience shows that 10 days is too short a time for many appellants to request further dispute resolution.

The Division is adding some information to N.J.A.C. 10:120A-4.1(d) to clarify the process of getting an administrative hearing. The Administrative Hearings Unit requests information about the dispute from the appellant in order to determine whether material facts are in dispute. It is only after that information is received that the Administrative Hearings Unit is able to determine whether the appellant is entitled to an administrative hearing.

The Division is removing the word "deemed" from the phrase "deemed eligible" from N.J.A.C. 10:120A-4.1(e) to bring the terminology in line with that used throughout the rules.

The Division proposes to amend N.J.A.C. 10:120A-4.1(f) to state that the Administrative Hearings Unit notifies the appellant that he or she is ineligible for an administrative hearing within 10 business days of making the determination, rather than within 10 business days of receiving the request. Within 10 business days of receiving the request does not allow enough time for the Administrative Hearings Unit to request and receive the appellant's information, gather the Division's information, make a determination, and notify the appellant.

The Division is proposing a new section at N.J.A.C. 10:120A-4.2 The purpose of this new section is to include a process which has evolved related to the disposition of certain requests for administrative hearings when no material facts are in dispute, most often regarding a finding of substantiated child abuse or neglect. This process, called a Motion for Summary Disposition, has developed as a way to generate a final agency decision even though the appellant is ineligible for an administrative hearing. A final agency decision is necessary to enable the appellant to appeal the finding to the Appellate Division of the Superior Court. The Division wishes to allow appellants this opportunity. This new rule explains the process followed for the benefit of appellants and their attorneys.

At N.J.A.C. 10:120A-3.1(a)2 and recodified 4.3(a)1, the Division is removing the term "action" and substituting the terms "denial, reduction, suspension, or termination." This is to clarify that that the word "action" did not mean "Division action." It meant one of the four actions previously stated. It seems clearer to repeat the four actions in the sentence.

The Division is proposing to delete (c)3 from recodified N.J.A.C. 10:120A-4.3 because although the Appellate Division determined in In the Matter of an Allegation of Physical Abuse Concerning L.R. at First Middle School on 3/26/96 (A.V.), 321 N.J. Super. 444 (App. Div. 1999) that appellants are not entitled to an OAL administrative hearing based on an investigative finding of "not substantiated" or "unfounded," the Division may transmit such cases with the concurrence of OAL. Since the Division is permitted to transmit these uncontested cases, they are already included with other uncontested cases in recodified N.J.A.C. 10:120A-4.3(b).

The Division is adding a new paragraph, (c)4 to recodified N.J.A.C. 10:120A-4.3, to list another type of dispute resolution request which is

ineligible for an administrative hearing at the OAL. Any Division action or agency decision that is being handled via a Motion for Summary Disposition, such as a request to change a finding of substantiated child abuse or neglect, is ineligible for an administrative hearing. If the Motion is granted, the Summary Disposition affirms the finding and is a final agency decision. If the Motion is not granted, the case is transmitted to the OAL as a contested case.

While relatives whom the Division has determined to be unwilling or unable to assume care of a child are entitled to a "review by the division" of this decision, the statute, N.J.S.A. 30:4C-12.1b(4), does not authorize an administrative hearing. Therefore, the Division is amending recodified N.J.A.C. 10:120A-4.3(c) to add a new paragraph 5 to state that requests for dispute resolution from these relatives will not be sent to the Office of Administrative Law.

Several technical changes are proposed to correct punctuation, capitalization, and grammar. These changes are in N.J.A.C. 10:120A-3.1(a)8, recodified 3.2(g), recodified 4.3(a), recodified 4.3(a)1, and in the definition of "Institutional Abuse Investigation Unit" at N.J.A.C.A 10:120A-1.3.

The Department has provided a 60-day comment period on this notice of proposal. Therefore, this proposal is exempted from the rulemaking calendar requirements in accordance with N.J.A.C. 1:30-3.3(a)5.

Social Impact

The social impact of the rules has been positive. Having an available and free method of disputing Division decisions puts applicants, clients, and service providers on a more equal footing with the Division. Their input into decisions affecting themselves is addressed throughout the Division's rules. These rules guarantee the Division's commitment to clients' and service providers' rights in accordance with the rules.

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The social impact of the amendments related to perpetrators of substantiated child abuse and neglect is that those perpetrators are provided with both informal and formal procedures to resolve disputes with the Division. In

1999, the Division substantiated 9,222 incidents of child abuse and neglect.

The Division expects that the proposed amendments will be favorably received. They are consistent with the due process opportunities offered throughout the legal system to persons with a dispute. As the Appellate Division stated in In the Matter of Allegations of Sexual Abuse at East Park High School, *supra*, 314 N.J. Super. at 165, there is "no government interest which will be impaired by a trial-type process which subjects the allegations made to rigorous testing."

Affording the perpetrator of substantiated child abuse and neglect an administrative hearing before an Administrative Law Judge in cases where material factual disputes exist will have a positive impact on the perpetrator when the finding of substantiation is overturned. Forty-four cases were referred to the Office of Administrative Law for an administrative hearing in 2000. Not being listed in the Division's Central Registry of perpetrators of substantiated child abuse and neglect has a positive impact in several ways. In addition to clearing the perpetrator's reputation, removing a person's name from the Central Registry permits a person to work in a child care center, to become a registered family day care provider, and to become an adoptive parent or foster parent. See N.J.S.A. 9:3-54.2b, N.J.A.C. 10:121A-5.6, N.J.A.C. 10:122C-1.7 and 2.13(b), N.J.A.C.10:122-4.9 and N.J.A.C. 10:126-5.3.

The Division also anticipates that the other amendments will positively impact on those who are affected by them. The telephone conferences may affect everyone who is entitled to a dispositional review. The revised notification process affects everyone who is notified of a Division action or agency decision. In 2000, these changes would have affected each of the persons who made the 1204 requests for dispositional reviews received by the Division and each of the persons for whom the 489 dispositional reviews were held.

Adding the ability of a relative, whom the Division has determined to be unwilling or unable to assume care of a child, to have a dispositional review is an advantage to the relatives. While the statute, N.J.S.A. 30:4C-12.1, states the relative's right to "review by the division," these rules provide detailed information about the process. This information can be helpful to the relative in preparing his or her appeal. In 2000, the Division completed at

least 19 dispositional reviews of relatives pursuant to statute.

Information about the Motion for Summary Disposition also benefits appellants of a substantiated finding of child abuse or neglect and other appellants when no material facts are in dispute. The appellant benefits from the information available about the process. Additionally, the process benefits the appellant by providing a mechanism to allow a further venue of appeal for those appellants ineligible for an administrative hearing at the OAL. The Division referred 10 cases to the Attorney General's office for Motions for Summary Disposition in 2000.

Economic Impact

The dispute resolution procedures outlined in this chapter have no negative financial impact upon perpetrators of substantiated child abuse or neglect, relatives of children under the Division's care, or clients or applicants of the Division. The Division and the Office of Administrative Law provide dispute resolution opportunities at no cost to the participants, although the participants are allowed to retain an attorney at their own expense.

The Division's expenses for holding dispositional reviews and processing requests for administrative hearings consist of the time of six review officers and their clerical support, and the Administrative Hearings Unit, which includes one professional employee and clerical support.

The expense of holding administrative hearings and dispositional reviews is part of State appropriations. By allowing more Division actions and agency decisions to be disputed, the amendments to the rules will generate more work for the Division and the OAL.

The rules are in compliance with New Jersey's State plan, required by the Federal Child Abuse Prevention and Treatment Act. The State plan must include provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal the finding, 42 U.S.C. §5106a(b)(2)(A)(xi)(II). New Jersey's basic state grant for FY 2001 was \$610,000.

In addition, the New Jersey Task Force on Child Abuse and Neglect received \$245,000 for FY 2001 from the Children's Justice Act, pursuant to 42 U.S.C. §5106c.

The rules are also in compliance with New Jersey's State plan for Title IV-E of the Social Security Act. The State plan must include an opportunity for a fair hearing for any individual whose claim for benefits is denied or not acted on with reasonable promptness. Since these rules establish opportunities for dispute resolution, they assist New Jersey to be eligible for Title IV-E funds. The Division's FY 2002 appropriation is \$83,291,000.

Federal Standards Statement

42 U.S.C. §5106a(b)(1) requires a State plan which specifies the areas of the child protective services system that the State intends to address with grant money received under the Child Abuse Prevention and Treatment Act. The State plan must assure that the State has provisions, procedures, and mechanisms by which individuals who disagree with an official finding of child abuse or neglect can appeal such a finding, in accordance with 42 U.S.C. §5106a(b)(2)(A)(xi)(II). The New Jersey Family Preservation and Support Services Plan, dated June 30, 1997, contains this assurance. These rules allowing perpetrators of substantiated child abuse and neglect to have a dispositional review or an administrative hearing by an Administrative Law Judge are in compliance with and do not exceed this section of the Federal law.

42 U.S.C. §671(a) requires states to have a State plan providing certain assurances in order for the State to receive money authorized by Title IV-E of the Social Security Act. 42 U.S.C. §671(a)(12) requires the State to grant an opportunity for a fair hearing to any individual whose claim for benefits is denied or not acted on with reasonable promptness. These rules assist the State to meet the requirements of the statute by providing methods of dispute resolution to those who apply for a service funded by Title IV-E, among those who are covered by the chapter.

I, Commissioner Gwendolyn L. Harris, certify that the above analysis permits the public to understand accurately and plainly the purposes and expected consequences of this rulemaking activity.

Gwendolyn L. Harris

Commissioner

Date

Jobs Impact

The Division does not expect that the proposed rules will result in the generation or loss of any job.

Agriculture Industry Impact

The proposed amendments have no impact on the agriculture industry.

Regulatory Flexibility Statement

Neither the Division nor the Division's applicants, clients or service providers are considered small businesses under the terms of N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The proposed rules do not impose reporting, recordkeeping or compliance requirements on small businesses. These rules provide clients and service providers an opportunity to dispute the Division's decisions in specified circumstances. Therefore, a regulatory flexibility analysis is not necessary.

Smart Growth Statement

The Division does not anticipate that the proposed readoption of rules with amendments will have any impact on the achievement of Smart Growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C.10:120A.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

Full text of the proposed new rules follows: